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In the Supreme Court of the United States

OCTOBER TERM, 1974

ALVIN A. BECKWITH, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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MEMORANDUM FOR THE UNITED STATES

After a non-jury trial in the United States District Court for the District of Columbia, petitioner was found guilty of willfully attempting to evade federal income taxes, in violation of 26 U.S.C. 7201. He was sentenced to five years' imprisonment and fined $10,000 and the costs of prosecution. The court of appeals affirmed (Pet. App. A, pp. 1a-5a).

The sole contention raised by the petition is that certain statements made by petitioner to agents of the Intelligence Division of IRS during their investigation should have been suppressed because the agents did not warn petitioner of his constitutional rights in accordance with *Miranda* v. *Arizona*, 384 U.S. 436.

The interview in question took place at the home of a friend of petitioner. During the interview, petitioner was neither arrested nor detained against his will.

As the court of appeals noted, petitioner was free to leave at any time and in fact was out of the agents' presence more than once (Pet. App. A, p. 3a). Moreover, the agents gave petitioner the standard Internal Revenue Service warning, which advised him, among other things, that his statements might be used against him in a criminal proceeding.[1] Under these circumstances, the court of appeals concluded that, there having been no custodial interrogation, petitioner's statements were admissible against him at his trial.

The decision below is in accord with the decisions of every other circuit but the Seventh Circuit, all of which have held that agents of the Intelligence Division of the Internal Revenue Service are not required to give a taxpayer under investigation any warning with respect to his constitutional rights, if the taxpayer has not been

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[1]The standard Internal Revenue Service warning given to petitioner by the agents was as follows (R. 7, p. 15; Pet. App. A, p. 4a, n. 6):

> As a special agent, one of my functions is to investigate the possibility of criminal violations of the Internal Revenue laws, and related offenses.
>
> Under the Fifth Amendment to the Constitution of the United States, I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any information which you submit may by used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding.

taken into custody.[2] Only the Seventh Circuit in *United States* v. *Dickerson*, 413 F.2d 1111, has held that once the Internal Revenue Service assigns a case to its Intelligence Division for investigation of possible criminal violations of the tax laws, the agents cannot interview the taxpayer without first providing him the warning required by this Court in *Miranda* v. *Arizona*, 384 U.S. 436, as a precondition to admissibility of statements made during custodial interrogation. In *Dickerson*, the court rejected the argument that *Miranda* had no application to a case where the taxpayer was interviewed in a non-custodial setting.

As Chief Judge Bazelon observed in this case, the test under *Miranda* is "whether the suspect 'has been taken into custody or otherwise deprived of his freedom in any significant way' " (Pet. App. A, p. 3a). Thus, *Miranda* does not require that a special agent of the Internal Revenue Service advise a taxpayer under investigation of his constitutional rights unless he interviews the taxpayer after taking him into custody. We believe it requires no extended argument to support the correctness of the disposition of this case and of the decisions of the ten circuits that have rejected arguments, such as peti-

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[2]See, *e.g.*, *Taglianetti* v. *United States*, 398 F.2d 558, 566 (C.A. 1), affirmed on another ground, 394 U.S. 316; *United States* v. *Mackiewicz*, 401 F.2d 219, 221-222 (C.A. 2), certiorari denied, 393 U.S. 923; *United States* v. *Jaskiewicz*, 433 F.2d 415, 417-420 (C.A. 3), certiorari denied, 400 U.S. 1021; *United States* v. *Browney*, 421 F.2d 48, 51-52 (C.A. 4); *United States* v. *Prudden*, 424 F.2d 1021, 1027-1031 (C.A. 5), certiorari denied, 400 U.S. 831; *United States* v. *Stribling*, 437 F.2d 765, 771 (C.A. 6), certiorari denied, 402 U.S. 973; *United States* v. *MacLeod*, 436 F.2d 947, 950 (C.A. 8), certiorari denied, 402 U.S. 907; *United States* v. *Robson*, 477 F.2d 13, 16 (C.A. 9); *Hensley* v. *United States*, 406 F.2d 481, 484 (C.A. 10); but cf. *United States* v. *Lockyer*, 448 F.2d 417, 422 (C.A. 10).

tioner advances, for what would constitute a radical extension of *Miranda* and a sharp departure from the *ratio decidendi* of that case.

Since the time of the *Dickerson* decision, there have been a number of certiorari petitions filed by defendants in tax prosecutions seeking review, as does petitioner here, on the ground of the conflict created by *Dickerson*. However, because the agent in *Dickerson* gave the taxpayer no warning and the Internal Revenue Service adopted in 1967 a "modified *Miranda* warning" to be used in such cases (see n. 1, *supra*), we have consistently opposed certiorari in such cases.[3] In opposing such petitions, we have suggested that the Internal Revenue Service's standard warning might be expected to be deemed sufficient by the Seventh Circuit, thereby obviating the need for this Court to resolve the conflict of decisions.

It now appears, however, that the conflict of decisions will persist. In *United States* v. *Oliver*, 505 F.2d 301, the Seventh Circuit held that the same Internal Revenue Service warning given in this case (see 505 F.2d at 303-304, n. 5) was inadequate under *Miranda*; it accordingly reversed Oliver's conviction for income tax evasion. In so holding, the court stated (505 F.2d at 304, n. 6):

[3]See, *e.g.*, *United States* v. *Mitchell*, 432 F.2d 354 (C.A. 1), certiorari denied, 401 U.S. 910; *United States* v. *Caiello*, 420 F.2d 471 (C.A. 2), certiorari denied, 397 U.S. 1039; *United States* v. *White*, 417 F.2d 89 (C.A. 2), certiorari denied, 397 U.S. 912; *United States* v. *Jaskiewicz*, 433 F.2d 415 (C.A. 3), certiorari denied, 400 U.S. 1021; *United States* v. *Prudden*, 424 F.2d 1021 (C.A. 5), certiorari denied, 400 U.S. 831; *United States* v. *Tonahill*, 430 F.2d 1042 (C.A. 5), certiorari denied, 400 U.S. 943; *United States* v. *Miriani*, 422 F.2d 150 (C.A. 6), certiorari denied, 399 U.S. 910.

> It is somewhat surprising to find that, some six years after *Miranda*, and three years after *Dickerson*, the I.R.S. continued to utilize warnings that failed to comply in these significant respects with the Supreme Court's mandate.

Although the facts in *Oliver* might arguably distinguish it from this case,[4] we are now persuaded that there exists a continuing conflict between the Seventh Circuit and all of the other courts of appeals as to whether a special agent of the Internal Revenue Service investigating potential criminal violations of the tax laws is required to give full *Miranda* warnings prior to interviewing the taxpayer in a non-custodial setting.[5]

This conflict should, in our view, now be resolved by this Court. However, in view of the overwhelming weight of appellate authority supporting the decision of the court of appeals in this case and the absence of support for the decisions in *Dickerson* and *Oliver*, either in *Miranda* or in other substantial precedent, we believe this

[4]While Oliver was being questioned at the office of special agents of the Intelligence Division, a person appeared claiming to be bearing a message for Oliver from an attorney. Oliver was not advised of this fact, and the questioning continued (see 505 F.2d at 304-306).

[5]In *Miranda*, the Court held that the person in custody must, prior to interrogation, be advised that he has the right to remain silent and that anything he says will be used against him, that he has the right to consult with a lawyer and to have the lawyer with him during interrogation, and that, if he is indigent, a lawyer will be appointed to represent him (384 U.S. at 467-473). The standard Internal Revenue Service warning employed in this case (see n. 1, *supra*) requires the special agent to state to the taxpayer that he cannot compel him to answer any questions or to submit any incriminatory information, rather than advise him that he has a right to remain silent. While the Internal Revenue Service warning advises the taxpayer that he may seek the assistance of an attorney before responding to the special agent's questions, it does not state that an attorney will be appointed if the taxpayer is indigent.

Court may deem it appropriate to grant certiorari and summarily affirm. A similar course has been followed in the past for resolution of conflicts among the circuits when the Court evidently believed that full briefing and argument was unnecessary to enable it to reach a decision. See, *e.g.*, *Taylor* v. *United States*, 414 U.S. 17; *Musser* v. *United States*, 414 U.S. 31.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

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